

## TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

### NOTICE OF PROPOSED RULEMAKING

The Public Employment Relations Board (PERB or Board) proposes to adopt, renumber, repeal, or amend the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

#### REGULATORY ACTION

The Board proposes to adopt sections 32056 and 32121 in Title 8, Division 3, Chapter 1, Subchapter 2, Article 1; amend sections 32100, 32150, 32155, 32300, 32305, 32310, 32315, 32320, 32350, 32360, 32370, 32375, 32380, and 32410 of PERB's Regulations (except for sections 32100, 32150 and 32155, only authority and reference citations are affected); move Section 17300 from Title 8, Division 1, Chapter 8, Subchapter 7, Article 1, and renumber and amend the section in Title 8, Division 3, Chapter 1, new Subchapter 9; and move Sections 15800 through 15875.1 from Title 8, Division 1, Chapter 8, Subchapter 2.2, and renumber and amend the regulations in Title 8, Division 3, new Chapter 9.

Senate Bill 1038 (Statutes of 2012, Chapter 46) transferred the State Mediation and Conciliation Service (SMCS) from the Department of Industrial Relations (DIR) to PERB. In part, Senate Bill 1038 provides, at Government Code section 3603(c), that "The regulations of the Director of Industrial Relations at Subchapter 2.2 (Sections 15800 to 15875.1, inclusive) and Subchapter 7 (Section 17300) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations shall remain in effect and shall be deemed to be regulations of the Public Employment Relations Board." The regulations identified in Government Code section 3603(c) address, respectively, representation procedures for those transit districts that are not subject to the Meyers-Milias-Brown Act (MMBA), and the current reimbursement for services policy of SMCS.

PERB is proposing amendments to the DIR regulations referenced above; for the most part, the effort is intended simply to reflect the transfer of responsibility from DIR and the DIR Director to PERB and to update/correct statutory references, while maintaining the status quo. The only substantive change proposed, other than those required by enactment of Senate Bill 1038, concerns the elimination of charges by SMCS for the conduct of representation (certification, decertification, etc.) elections, card check procedures, and agency shop elections. In addition, two new regulation sections are proposed to provide necessary definitions within PERB's regulations, and amendments to a few existing regulations are proposed to reflect the addition of SMCS to PERB (and to distinguish mediators from other Board agents, where appropriate).

#### PUBLIC HEARING

The Board will hold a public hearing at 10:00 a.m., on December 13, 2012, in Room 103 of its headquarters building, located at 1031 18th Street, Sacramento, California. Room 103 is wheelchair accessible. At the hearing, any person may orally present statements or arguments relevant to the proposed action described in the Informative Digest. It is requested, but not

required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing. Any person wishing to testify at the hearing is requested to notify the Office of the General Counsel as early as possible by calling (916) 322-3198 to permit the orderly scheduling of witnesses and to permit arrangements for an interpreter to be made if necessary.

## WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on December 11, 2012. Written comments will also be accepted at the public hearing. Submit written comments to:

Jonathan Levy, Regional Attorney  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95811  
(916) 327-8387  
FAX: (916) 327-6377  
E-mail: [jlevy@perb.ca.gov](mailto:jlevy@perb.ca.gov)

or

Katharine Nyman, Regional Attorney  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95811  
(916) 327-8386  
FAX: (916) 327-6377  
E-mail: [knymn@perb.ca.gov](mailto:knymn@perb.ca.gov)

## AUTHORITY AND REFERENCE

Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Educational Employment Relations Act (EERA). Pursuant to Government Code sections 3509(a) and 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Meyers-Milias-Brown Act (MMBA). Government Code section 3513(h) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Ralph C. Dills Act (Dills Act). Government Code section 3563 authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Higher Education Employer-Employee Relations Act (HEERA). Pursuant to Public Utilities Code section 99561(f), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Los Angeles County Metropolitan

Transportation Authority Transit Employer-Employee Relations Act (TEERA). Pursuant to Government Code sections 3541.3(g) and 71639.1(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Governance and Employment Protection Act (Trial Court Act). Pursuant to Government Code sections 3541.3(g) and 71825(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act). Pursuant to Senate Bill 1038; Statutes of 2012, Chapter 46, Government Code section 3603(c) states, “The regulations of the Director of Industrial Relations at Subchapter 2.2 (Sections 15800 to 15875.1, inclusive) and Subchapter 7 (Section 17300) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations shall remain in effect and shall be deemed to be regulations of the Public Employment Relations Board.”

General reference for proposed section 32056: Section 3600, Government Code. General reference for proposed section 32121: Sections 3600, 3601, 3603, and 3611, Government Code; and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 100301, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4, and Appendix 2, Sections 13.90, 13.91, and 13.96, Public Utilities Code. General reference for section 32100: Section 19604, Business and Professions Code; Section 57031, Food and Agricultural Code; Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509, 3513(h), 3541.3, 3563, 3600, 3601, 3602, 3603, 3611, 71632.5, 71636, 71636.1, 71636.3, 71637, 71637.1, 71639.1, 71823 and 71825, Government Code; Section 2686, Labor Code; and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 99561, 100301, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4, and Appendix 2, Sections 13.90, 13.91, and 13.96, Public Utilities Code. General reference for section 32150: Sections 3509, 3513(h), 3541.3(h), 3563(g), 3601, 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code. General reference for section 32155: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561, 99562, 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32300: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32305: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32310: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32315: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91,

25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32320: Sections 3509, 3513(h), 3514.5, 3541.3(k), 3541.3(n), 3563(j), 3563(m), 3563.2, 11425.60, 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 99561.2, 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32350: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32360: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32370: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32375: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32380: Sections 3505.4, 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for section 32410: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code. General reference for proposed section 32998: Sections 3600, 3601, 3602, 3603, and 3611, Government Code; Sections 25051, 25052, 28850, 28852, 30750, 30751, 30756, 40120, 40122, 50120, 50121, 70120, 70121, 95650, 95651, 98162.5, 100301, 100304, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 120502, 120503, 120505, 125521, 125524, 125525 and 125526; Appendix 1, Section 4.1 and Appendix 2, Section 13.90, Public Utilities Code; Section 11010, Government Code; and Sections 8740 and 8752, State Administrative Manual. General reference for proposed section 93000: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor-Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72. General reference for proposed section 93005: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, and 125521, Public Utilities Code. Additional reference: Labor-Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Section 102.60-102.72. General reference for proposed section 93010: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Section 102.60-102.72. General



93075: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72. General reference for proposed section 93080: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300(b), 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

## POLICY STATEMENT OVERVIEW

PERB is a quasi-judicial agency which oversees public sector collective bargaining in California. PERB presently administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB are: the Meyers-Milias-Brown Act (MMBA) of 1968, which established collective bargaining for California's city, county, and local special district employers and employees; the Educational Employment Relations Act (EERA) of 1976 establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act), establishing collective bargaining for state government employees; the Higher Education Employer-Employee Relations Act (HEERA) of 1979 extending the same coverage to the California State University System, the University of California System and Hastings College of Law; the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) of 2003, which covers supervisory employees of the Los Angeles County Metropolitan Transportation Authority; and the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002, which together provide for collective bargaining rights for most trial court employees. PERB also now has jurisdiction over the In-Home Supportive Services Employer-Employee Relations Act of 2012 (IHSSA), which is applicable to certain in-home supportive services providers, but no changes related to the enactment of that new statute are reflected in this rulemaking package.

As explained in more detail below in the Informative Digest, the changes proposed by this Notice address the transfer and incorporation of DIR regulations pertaining to the State Mediation and Conciliation Service, with a unifying theme of both more clarity and transparency in the Board's processes, and efficiency to constituents resulting from having all relevant regulations contained in one location.

## INFORMATIVE DIGEST

Proposed Section 32056 would provide necessary SMCS definitions of "service," "SMCS" or "Division of Mediation" as well as "Supervisor" within PERB's regulations.

Section 32100 establishes the application of PERB regulations. The only change proposed, other than the updating of authority and reference citations, is the addition of subsection (f)

limiting the applicability of the PERB regulations to mediation, election and other services provided by mediators or conciliators except as expressly provided.

Proposed Section 32121 would identify the appropriate location for filing documents with the SMCS.

Section 32150 sets forth the requirements related to issuance of subpoenas. The only change proposed, other than the updating of authority and reference citations, is the modification of subsection (e) to expand the definition of “Board agent” to include a mediator or conciliator employed within SMCS and to limit the applicability of the regulation so as not to apply when a mediator or conciliator is performing services pursuant to Government Code 3601.

Section 32155 addresses the disqualification of Board agents and Board members. The only change proposed, other than the updating of authority and reference citations, is the modification of subsection (a) expanding the applicability of the regulation to encompass SMCS mediators and conciliators.

Section 32300 addresses exceptions to a Board agent’s decision. The only change proposed is the updating of authority and reference citations.

Section 32305 addresses when proposed decisions become final. The only change proposed is the updating of authority and reference citations.

Section 32310 provides the procedure for responding to exceptions. The only change proposed is the updating of authority and reference citations.

Section 32315 provides for circumstances when the Board may order the taking of testimony by deposition. The only change proposed is the updating of authority and reference citations.

Section 32320 concerns decisions issued by the Board itself. The only change proposed is the updating of authority and reference citations.

Section 32350 provides the definition of “administrative decision.” The only change proposed is the updating of authority and reference citations.

Section 32360 provides the requirements for an appeal. The only change proposed is the updating of authority and reference citations.

Section 32370 concerns requests for stay of activity. The only change proposed is the updating of authority and reference citations.

Section 32375 addresses the filing of a response to an administrative appeal. The only change proposed is the updating of authority and reference citations.

Section 32380 provides the limitations of filing an appeal. The only change proposed is the updating of authority and reference citations.

Section 32410 addresses requests for reconsideration. The only change proposed is the updating of authority and reference citations.

Existing Section 17300 (renumbered as Section 32998), consistent with Government Code section 3602 (and former Labor Code section 67), provides for reimbursement to SMCS for election services (including card check procedures), arbitration-related services, and training and facilitation services, as well as hearing officer services in resolving representation disputes under various public transit acts. The proposed amendments to this renumbered section would leave intact the reimbursement policy for all of these services except election work. Less than one-third of the revenue realized over the first two fiscal years this policy has been in effect has come from election work.

The proposed amendments would eliminate the “fee for service” for card check procedures and elections that resolve questions of representation. Such issues are integral to maintaining the integrity of the labor-management relationship. While this change would shift costs to PERB’s budget, there would be an offsetting savings for affected public agencies and the employee organizations representing or seeking to represent public employees. This change would also eliminate any question of election costs having to be borne by individual employees who exercise their right, as a group, to seek to decertify their exclusive representative or rescind an agency shop fee. Charging for elections (costs are normally split between the agency and the employee organization) also disadvantages employee groups that are newly established and may not have the funds to share the cost of an election. In general, this change would reinforce the neutral role of the SMCS and PERB in administering representation procedures.

It is important to note that neutral labor agencies in other states do not charge for election services, even in states where they charge for other services. Likewise, PERB itself does not charge for election services. Since SMCS is now a division of PERB, this change is also necessary to avoid a conflict with respect to how elections are conducted within PERB. This change will also facilitate the integration of SMCS into PERB and provide for cross-utilization of mediators and other PERB staff for similar work such as election services.

Existing Section 15800 (renumbered as Section 93000) provides definitions applicable under specified transit district acts and laws. The proposed changes would remove the definition of “Director” and “Service” from the regulation, move Section 15800 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to update authority and reference citations to reflect the transfer of SMCS from DIR to PERB (Chapter 46, Statutes 2012). The proposed changes would also eliminate reference to the DIR Director and replace the reference with “Supervisor” to reflect the transfer of responsibility from the DIR Director to PERB, eliminate the definition of “service” in this section, and update other statutory references in the text.

Existing Section 15805 (renumbered as Section 93005) concerns the process for filing a petition for certification. The proposed changes would update the location for filing a petition with SMCS to reflect the content of proposed regulation 32121, correct a typographical error in subsection (b), and remove reference to the service in subsection (c). The proposed changes are necessary to move Section 15805 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and

renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes, and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15810 (renumbered as Section 93010) identifies the form of a petition for certification. The proposed changes would eliminate the need for five copies of a petition in subsections (a) and in (n) confirm the service and obligations to the petitioner consistent with current PERB regulations. The proposed changes are necessary to move Section 15810 from Title 8, Division 1, Chapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15815 (renumbered as Section 93015) identifies the percentage of valid authorizations required to determine the existence of a representation dispute. The proposed changes would clarify the requirement that authorizations be signed by the employee in subsection (a), and replaces the reference to the service with SMCS in subsections (b) and (c). The proposed changes are necessary to move Section 15815 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15820 (renumbered as Section 93020) provides for the use of consent election agreements. The proposed changes make clarifying and stylistic changes. The proposed changes are necessary to move Section 15820 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15825 (renumbered as Section 93025) provides for an investigation of a petition by service. In subsection (a), the proposed changes replace the references to the "service" with "SMCS" or "Supervisor," eliminates the requirement that a copy of the petition be served with the notice of hearing, and clarifies the timeframe by when a notice of hearing may be amended or withdrawn by the Supervisor. In subsection (b), the proposed changes update references to PERB regulations, replace the references to the "service" with "Supervisor," eliminate the need for approval from the DIR Director, eliminate the need for a copy of the petition to be served with the notice of hearing, and eliminate reference to the finality of the Director's decision. In subsection (c), the proposed changes update references to PERB regulations, replace the references to the "service" with "Supervisor," and eliminate the requirement for the approval of the Director. The proposed changes also include the addition of subsection (d) identifying the ability to appeal any determination made by the Supervisor to the PERB Board in accordance with existing PERB regulations. The proposed changes are necessary to move Section 15825 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15830 (renumbered as Section 93030) concerns the conduct of hearings concerning a petition for certification. In subsection (a), the proposed change replaces reference to the “Director” with “Board,” replaces reference to the “service” with “SMCS, the Supervisor, the hearing officer,” and replaces references to the prior transit district acts and laws with Section 93000. In subsection (b), the proposed change adds the words “or her” to convey gender neutrality. In subsection (c), the proposed changes update references to the newly proposed section numbers, correct a typographical error, clarify that written motions are to be filed with the hearing officer, eliminate the additional procedure for motions made prior to hearing, and clarify the process by which hearing officers rule on motions. The proposed changes are necessary to move Section 15830 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15835 (renumbered as Section 93035) provides the process for intervention. The proposed changes remove reference to the “service,” restructure sentences for gender neutrality, and correct a typographical error. The proposed changes are necessary to move Section 15835 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15840 (renumbered as Section 93040) identifies the rights and duties of parties at hearing. In subsection (c), the proposed changes include replacing the term “Rulings” with “Interlocutory rulings,” and removing the ability to appeal the rulings to the DIR Director. In subsection (d), the term “stenographic report” is replaced by “transcript,” and in subsection (f) a typographical error is fixed. The proposed changes are necessary to move Section 15840 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15845 (renumbered as Section 93045) identifies the application process for subpoenas. The proposed changes replace reference to the “service” with “Supervisor” or “the hearing officer,” make non-substantive stylistic changes, and clarify the role of the hearing officer. The proposed changes are necessary to move Section 15845 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15850 (renumbered as Section 93050) concerns post-hearing briefing. The only changes proposed are the updating of authority and reference citations. The proposed changes are necessary to move Section 15850 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15855 (renumbered as Section 93055) identifies the duties of a hearing officer following a hearing. The proposed changes restructure sentences for gender neutrality and style, replace “stenographic report” with “transcript,” replace “director” with “Supervisor,” eliminate review of the hearing by the Director, and update the appeal process pursuant to Section 93060. The proposed changes are necessary to move Section 15855 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15860 (renumbered as Section 93060) identifies the process for filing exceptions. The proposed changes replace the current procedure for filing exceptions and replace it incorporating reference to the existing Section 32300. The proposed changes are necessary to move Section 15860 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15865 (renumbered as Section 93065) concerns the determination of whether an election should be held. The proposed changes replace the procedure for issuing a determination and replace it with incorporation of reference to Sections 32300 through 32320, and 32400 and 32410. The proposed changes also restructure the remaining sentences to stylistically conform to the replacement of the procedure language, and replace “Director” with “Board.” The proposed changes are necessary to move Section 15865 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15870 (renumbered as Section 93070) identifies the procedures for conducting an election. In subsections (a), (b), (d), (e) and (f), the proposed changes replace reference to the “service” with “SMCS,” replace reference to “director” with “Supervisor,” make stylistic changes, and update cross-references. In (c), the proposed changes replace reference to the “service” with “Supervisor,” make stylistic changes, and eliminate the requirement that the Director prepare a report on challenged ballots, objections, or both. The proposed changes are necessary to move Section 15870 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15875 (renumbered as Section 93075) identifies the procedures for conducting a runoff election. The proposed changes replace reference to the “service” with “SMCS,” replace “director” with “Supervisor,” update reference citations, and make stylistic changes. The proposed changes are necessary to move Section 15875 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15875.1 (renumbered as Section 93080) provides for the application of relevant federal law in resolving questions of representation. The proposed change replaces “Director” with “Board” and updates the authority and reference citations. The proposed changes are necessary to move Section 15875.1 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

## CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, PERB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

## ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

These regulations and changes will improve the public sector labor environment and the collective bargaining process by clarifying PERB procedures, making the Board’s processes more transparent and accessible, and updating regulations consistent with current law. The changes will also reinforce the neutrality of PERB and SMCS procedures and result in some cost savings for local government agencies.

## DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: Initial determination of the agency is that the proposed action would not impose any new mandate.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 et seq: Initial determination of the agency is that the proposed action would not impose any new costs, and therefore requires no reimbursement.

Other non-discretionary cost or savings imposed upon local agencies: None

Costs or savings to state agencies: Minimal impact on the PERB budget with savings to public agencies, employee organizations and employees.

Cost or savings in federal funding to the state: None

Cost impact on representative private persons or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: Initial determination of the agency is that the proposed action will have no impact.

Significant effect on housing costs: The agency's initial determination is that there is no effect on housing costs.

The proposed regulations will not affect small business because they only affect public employers and public employees.

## RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments and sections will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The adoption of the proposed amendment will benefit public employers, employees, employees' representatives and the community at-large by further facilitating the resolution of public sector labor disputes by clarifying PERB procedures, making the Board's processes more transparent and accessible, and eliminating redundant procedures. In so doing, California residents' welfare will receive the benefit of stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that these employers and employees provide to California communities.

## CONSIDERATION OF ALTERNATIVES

A rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

## PRELIMINARY ACTIVITIES

PERB staff invited comments on possible regulation changes by circulating discussion drafts of possible regulation changes in September 2012, including by posting the drafts on PERB's website. The Board also relied upon the Economic Impact Assessment identified in this Notice in proposing regulatory action.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, at the address below. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies of these documents and the Final Statement of Reasons, when available, may be obtained by

contacting Jonathan Levy or Katharine Nyman at the address or phone number listed below, and are also available on the Board's web site (see address below).

#### ADOPTION OF PROPOSED REGULATIONS, AVAILABILITY OF CHANGED OR MODIFIED TEXT AND FINAL STATEMENT OF REASONS

Following the hearing, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text—with changes clearly indicated—shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Jonathan Levy or Katharine Nyman at the address indicated below. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### INTERNET ACCESS

The Board will maintain copies of this Notice, the Initial Statement of Reasons and the text of the proposed regulations on its web site, found at [www.perb.ca.gov](http://www.perb.ca.gov), throughout the rulemaking process. Written comments received during the written comment period will also be posted on the web site. The Final Statement of Reasons or, if applicable, notice of a decision not to proceed will be posted on the web site following the Board's action.

#### CONTACT PERSONS

Any questions or suggestions regarding the proposed action or the substance of the proposed regulations should be directed to:

Jonathan Levy, Regional Attorney  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95811  
(916) 327-8387  
FAX: (916) 327-6377  
E-mail: [jlevy@perb.ca.gov](mailto:jlevy@perb.ca.gov)

or

Katharine Nyman, Regional Attorney  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95811  
(916) 327-8386  
FAX: (916) 327-6377  
E-mail: [knymn@perb.ca.gov](mailto:knymn@perb.ca.gov)